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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )

DIS

Request for Limited Modification of  
LATA Boundaries to Provide ELCS  
Between Verizon Virginia Inc 's  
Crows-Hematite Exchange and  
NTELOS Network Inc 's  
Potts Creek Exchange )

CC Docket No 96-159

### MEMORANDUM OPINION AND ORDER

Adopted: April 29, 2004

Released: April 29, 2004

By the Chief, Competition Policy Division.

#### I. INTRODUCTION

1. On November 3, 2003, Verizon Virginia Inc (Verizon), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),<sup>1</sup> filed a petition (Verizon Petition) to provide two-way, non-optional, expanded local calling service (ELCS) between certain exchanges in Virginia.<sup>2</sup> The Verizon Petition requests a limited modification of local access and transport area (LATA) boundaries to provide ELCS between Verizon's Crows-Hematite exchange located in the Charleston, West Virginia LATA and NTELOS Network, Inc.'s (NTELOS') Potts Creek exchange located in the Roanoke, Virginia LATA, as required by the Virginia State Corporation Commission (Virginia Commission).<sup>3</sup> We grant Verizon's petition for the reasons stated below

#### II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers.<sup>4</sup> Although intraLATA ELCS routes can be ordered by a state commission,<sup>5</sup> pursuant to section 3(25)(B) of the Act

<sup>1</sup> See 47 U.S.C. § 153(25). Section 3(25) of the Act defines a LATA as a contiguous geographic area (1) established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (2) established or modified by a BOC after such date of enactment and approved by the Commission. *Id.*

<sup>2</sup> See Request by Verizon Virginia Inc for Limited Modification of LATA Boundaries to Provide ELCS Between Verizon Virginia Inc 's Crows-Hematite Exchange and NTELOS Network Inc 's Potts Creek Exchange, CC Docket No 96-159 (filed Nov 3, 2003) (Verizon Petition). See *Comments Sought on Verizon Virginia Inc Request for Limited Modification of LATA Boundaries in Virginia*, CC Docket No 96-159, Public Notice, DA No. 04-312 (rel. Feb. 5, 2004). We note that all of the exchanges are in Virginia.

<sup>3</sup> See Verizon Petition at 1, Virginia State Corporation Commission, *Petition of Potts Creek Exchange Customers for Extended Local Service from NTELOS Telephone, Inc 's Potts Creek Exchange to Verizon Virginia Inc 's Crows-Hematite Exchange*, Case No PUC-2002-00180, Final Order, Document Control No 030640074 (rel. June 20, 2003) (Virginia Order).

<sup>4</sup> The Verizon Petition was initiated by subscribers of NTELOS Network Inc 's Potts Creek exchange. See Verizon Petition at 4. The Potts Creek exchange has approximately 731 access lines. See *id.* at 3. Adjacent to the

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requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.<sup>6</sup> Applying a two-part test, the Commission will grant a request for a LATA boundary modification where (1) the applicant proves that the requested LATA modification would provide a significant public benefit; and (2) granting the petition would not remove the BOC's incentive to receive authority to provide in-region, interLATA service pursuant to section 271.<sup>7</sup> The Verizon Petition proposes to establish two-way, non-optional ELCS, and is accompanied by an order issued by the Virginia Commission approving the ELCS request.<sup>8</sup> No party filed any opposing comments to the Verizon Petition.

### III. DISCUSSION

4. We conclude that Verizon's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that Qwest has shown that a public benefit would result from the ELCS because a sufficient community of interest exists among the affected exchanges to justify their being treated as a local calling area.<sup>9</sup> In reaching this finding, we note that Verizon proposes to offer traditional, two-way, non-optional local service in the ELCS,<sup>10</sup> which the Commission has determined to be consistent with the public interest.<sup>11</sup> Further, the Verizon Petition demonstrates a community of interest between the two affected exchanges based on location in the same magisterial district, shared schools and public services, cooperation between public safety agencies, and personal communications between friends, relatives, and churches.<sup>12</sup> We also note that no rate increases will result directly from the ELCS services at issue.<sup>13</sup> We

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Potts Creek exchange, Verizon's Crows-Hematite exchange has 334 access lines with approximately ten of those being business lines. See *id*.

<sup>5</sup> *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id*.

<sup>6</sup> *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U.S. WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392-99 (1999).

<sup>7</sup> See *SBC Telecom, Inc. Petition for Modification of Certain LATA Boundaries in Ohio*, File No. NSD-L-00-25, Memorandum Opinion and Order, 18 FCC Rcd 26398 (2003), paras. 2, 6-8.

<sup>8</sup> Verizon Petition at 4, Virginia Order at 3.

<sup>9</sup> See *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10653 (1997) (1997 LATA Order) (July 1997 LATA Order).

<sup>10</sup> Verizon Petition at 1.

<sup>11</sup> See, e.g., *Bell-Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling service (ELCS) at Various Locations*, File No. NSD-L-97-45, Memorandum Opinion and Order, 13 FCC Rcd 11042 (1998) (April 1998 LATA Order), *Bell Atlantic-Virginia Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service (ELCS)*, File No. NSD-L-98-143, Memorandum Opinion and Order, 14 FCC Rcd 4371 (1999) (1999 Virginia LATA Order). Although Verizon proposes to offer measured-rate service in addition to flat-rate service, that does not alter our conclusion that a sufficient community of interest exists among the affected exchanges to justify the ELCS. The services that Verizon proposes to offer in the expanded local calling area are identical to the service options (measured or flat-rate) that were available prior to the implementation of ELCS. Verizon Petition at 1-2. Although the Commission has traditionally favored flat-rate service as the best indicator that a community of interest exists among the affected exchanges, the Commission has granted LATA boundary modifications for measured-rate ELCS where the service offered in the proposed ELCS is identical to that offered prior to the application. See *April 1998 LATA Order*, 13 FCC Rcd at 11045, para. 7, see also *1999 Virginia LATA Order*, 14 FCC Rcd 4374, para. 6.

<sup>12</sup> See Verizon Petition at 3.

find, therefore, that the petition is based on a significant community of interest, and thus satisfies the first prong of the Commission's two-part test

5 Verizon also satisfies the second prong of the two-part test because it has already opened its market to competition in Virginia and, accordingly, has been granted authority under section 271 to offer interLATA service in that state.<sup>14</sup> Thus, granting the requested modification has no bearing on Verizon's incentive to receive such authority. Moreover, we conclude that the LATA boundary modification would have a minimal effect upon competition because modification of the LATA boundary would affect only a small number of access lines.<sup>15</sup> As a result, we believe that granting Virginia's petition serves the public interest by permitting a minor LATA modification where such a modification is necessary to meet the needs of local subscribers. Accordingly, we approve Verizon's petition for limited LATA boundary modifications.

6 We grant this relief solely for the limited purpose of allowing Verizon to provide ELCS between the specific exchanges or geographic areas identified in this request. The LATA boundary is not modified to permit Verizon to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, non-optional ELCS between the specified exchanges will be treated as intraLATA service.<sup>16</sup>

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<sup>13</sup> See Verizon Petition at 4. Virginia law requires no polling of the affected customers upon receipt of an ELCS petition if the affected customers' rates will not increase as a result of the extension of their local service area. Virginia State Code, § 56-484.2.

<sup>14</sup> *Application by Verizon Virginia Inc. for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, 17 FCC Rcd 21880 (2002).

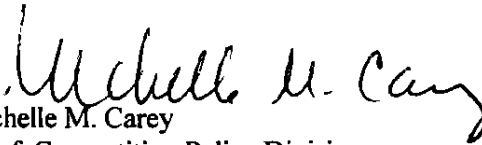
<sup>15</sup> As noted previously, the Crows-Hematite exchange has 334 access lines, and the Potts Creek exchange has 731 access lines. See Verizon Petition at 1. For the purposes of ELCS petitions, we generally consider the number of access lines from customers in the smaller exchange who seek to reach businesses and services in the other exchange. This exchange usually generates the majority of calls between the two exchanges. See *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-134, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). Therefore, for the purposes of reviewing these modifications and based on the Verizon Petition's community of interest statement, we consider Verizon's 334 access lines in the Crows-Hematite exchange, a number within Commission precedent. See Verizon Petition at 3, *April 1998 LATA Order*, 13 FCC Rcd at 11046, para. 8 (granting an ELCS petition affecting over 30,000 access lines).

<sup>16</sup> Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply. See, e.g., 47 U.S.C. § 272(f)(1) (stating that a BOC is required to provide interLATA services through a separate affiliate for three years after the date on which it is authorized to provide in-region, interLATA telecommunications services).

**IV. ORDERING CLAUSE**

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of Verizon Virginia Inc. for a LATA boundary modification for the limited purpose of providing two-way, traditional, non-optional ELCS at specific locations in Virginia, identified in CC Docket No. 96-159, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION



Michelle M. Carey  
Chief, Competition Policy Division  
Wireline Competition Bureau